R RENUGA RAMAYAH v. RAMESH SENGARAN

HIGH COURT MALAYA, SHAH ALAM
JULIE LACK J
[DIVORCE PETITION NO: BA-33-382-07-2019]
12 APRIL 2024

Abstract – *Once a court order has been issued against an individual, he is bound to comply with such order until the order has been set aside or varied. It is not open for him to decide whether the order was wrongly issued. Any failure or neglect to comply with the court order would pave the way for contempt proceedings against that person. In order for contempt to be established, it must be proven that the order has been contumaciously disregarded, ie, the contempt must be wilful.*

FAMILY LAW: *Children – Maintenance – Court order for husband to pay child maintenance – Default in payment – Commencement of committal proceedings by wife – Whether husband had full knowledge of obligation to pay maintenance – Whether wilful neglect to comply with court order – Whether husband genuinely could not afford to pay maintenance – Whether appeal filed against court order – Whether breach of court order proven beyond reasonable doubt – Whether husband guilty of contempt*

The parties were married and had a daughter ('child'). The marriage broke down and the petitioner wife ('PW') filed a divorce petition. After the trial, *decree nisi* was granted and was made absolute immediately. The PW was granted sole custody care and control of the child with supervised access granted to the respondent husband ('RH') every Saturday from 5pm to 7pm at a predesignated public place. The RH was further ordered to pay a monthly maintenance of RM1,500 for the child until the child graduated from her first university degree. The RH was also ordered to pay arrears of the child maintenance of RM1,500 per month with effect from the date of the filing of the divorce petition until date of said order. The RH refused/neglected to pay the maintenance and arrears of maintenance and continued to do so even after the filing of the notice of application in encl. 125 by the PW to seek an order for committal against the RH. At the outset, the RH raised preliminary objections, *inter alia*, that the PW had: (i) failed to serve the order granting leave personally on the RH and had thus violated O. 52 r. 4(3) of the Rules of Court and it was fatal; and (ii) pursued the wrong mode of enforcement for monthly child maintenance which was a monetary judgment.

Held (sentencing RH to imprisonment term of four months):

(1) The RH was aware and was in full cognisance of the committal proceedings that was commenced against him. It was unjust and inequitable of the RH to seek the committal application to be set aside

on technical grounds when the cause papers had been duly served on the RH's solicitors and the RH had, without missing a beat, filed an affidavit to oppose the application. In any event, even if there was non-service of cause papers, it did not automatically render the committal proceedings illegal. This matter pertained to an order that was granted after a full trial with witnesses and exhibits tendered. The RH had ample opportunity to defend himself. An order obtained after a full trial entitled it to be enforced by way of a committal proceedings. Therefore, the preliminary objections by the RH were dismissed. (paras 24, 30, 33, 35 & 36)

(2) The RH had never disputed that he had never made any payments as maintenance for the child but, provided a litany of excuses for not doing so. All the reasons and assertions were untenable and devoid of merit. Further, the impecuniosity and health issues referred to by RH were not new issues, the same having been raised at the trial. The RH was uncaring about the best interest and welfare of his only child. If it was true that he genuinely could not afford to pay the maintenance sum, he could have appealed against the decision on the issue of quantum or applied to court to vary the sums to be paid. However, no such application had been made. The evidence, considered in its totality, proved the RH had beached and/or refused to comply with the court order to pay maintenance for his child beyond a reasonable doubt. The RH was found guilty of contempt of court in his conduct in not fulfilling his obligation to pay the monthly child maintenance as well as the arrears of maintenance as provided for in paras. 4 and 5 of the court order. (paras 46-48, 52 & 53)

(3) The RH, despite being given an opportunity to purge his contempt, failed to use the opportunity. The disobedience in failing to comply with the court order was unacceptable and called for a custodial sentence. The RH had full knowledge of his obligation to pay maintenance for the child but had wilfully neglected that most basic financial obligation, since the day the child was born. This indicated the RH's intention to avoid making any payments to the child. Therefore, the court sentenced RH to a term of four months' imprisonment. (paras 53-58)

Case(s) referred to:

Anita Carolyn Francis v. Veeramohan Dorairaja [2022] CLJU 2183; [2022] 1 LNS 2183 HC ***(refd)***

Avery v. Andrew [1879] 13 Ch D 110 ***(refd)***

Daljinder Singh v. Amardeep Singh Daljinder Singh [2022] CLJU 2405; [2022] 1 LNS 2405 HC ***(refd)***

Golden Star & Ors v. Ling Peek Hoe & Ors [2021] 3 CLJ 443 FC ***(refd)***

Lee Lay Ling v. Goh Kim Nam & Anor [2013] CLJU 1000; [2013] 1 LNS 1000 HC ***(refd)***

Madlis Azid & Ors v. Chua Yung Kim & Ors [2013] 2 CLJ 110 HC ***(refd)***
Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors [2012] 2 CLJ 849 FC ***(refd)***
TO Thomas v. Asia Fishing Industry Pte Ltd [1977] CLJU 126; [1977] 1 LNS 126 FC ***(refd)***
United Telephone Co v. Dale [1884] 25 Ch D 778 ***(refd)***
Usharani Supramaniam v. Vijaya Chander Rajendram [2022] CLJU 2680; [2022] 1 LNS 2680 HC ***(refd)***

Legislation referred to:
Rules of Court 2012, O. 45 rr. 1, 5, O. 52 rr. 3, 4(3), O. 53 r. 3

For the petitioner - R Renuga Ramayah; M/s R Renuga Ram & Co
For the respondant - Lucas Low Lay Hoe; M/s Chee & Assocs

Reported by S Barathi

JUDGMENT

Julie Lack J:

Introduction

[1] Enclosure 125 was filed by the petitioner wife (PW) to seek for an order for committal against the respondent husband (RH) for breaching the order of court granted by SM Komathy J (as Her Ladyship then was) dated 31 October 2022. The non-compliance is in relation to the RH's failure to pay child maintenance and arrears of maintenance.

[2] In this matter, I had directed for written submissions to be prepared and called for the RH to give evidence from the witness stand before closing the proceedings.

[3] After having read the cause papers, considered the written and oral submissions by the parties as well as the sworn evidence of the RH, I was satisfied beyond reasonable doubt that the RH was guilty of contempt of court in failing to pay child maintenance and arrears of maintenance in wilful breach of the order of court dated 31 October 2023, in particular, paras. 4 and 5 thereof.

[4] Sentence was deferred, giving the RH time and the opportunity to purge his contempt. He failed to do so and on 24 November 2023, the RH was sentenced to a term of four months' imprisonment to take effect from the date of the order.

[5] The RH has appealed against my decision.

[6] These are my reasons for my decision.

A **Background Facts**

[7] The parties were married on 9 April 2010 and have a daughter (the child) who is now 11 years old. The marriage broke down and the PW filed a divorce petition on 12 July 2019. The matter went to trial and on 31 October 2022 the learned judge allowed a *decree nisi* to be granted and
B made absolute immediately.

[8] The learned judge ordered, *inter alia,* that the PW be granted sole custody care and control of the child with supervised access granted to the RH every Saturday from 5pm to 7pm at a predesignated public place.

C **[9]** The learned judge further ordered the RH to pay a monthly maintenance of RM1,500 per month for the child until the child graduates from her first university degree. The said maintenance amount is to be payable into the PW's bank account on or before the seventh of each month from the date of such order.

D **[10]** The RH was also ordered to pay arrears of child maintenance of RM1,500 per month with effect from the date of the filing of the divorce petition until date of said order.

[11] The RH refused/neglected to pay the maintenance and arrears of maintenance and still continued to do so even after the notice of application
E in encl. 125 was filed. The PW sent several reminders and notices urging the RH to comply with the order prior to filing the instant application. The PW was left with no alternative but to file this committal proceedings.

[12] Leave to commence committal proceedings was granted to the PW by
F this court on 11 April 2023 pursuant to O. 52 r. 3 of the ROC 2012.

[13] Subsequently, she filed the instant application to enforce the order of the court dated 31 October 2022.

[14] At the time of the filing of the application, the RH was in arrears of child maintenance of RM60,000 for the period from July 2019 to October
G 2022 and thereafter the sum of RM6,000 from November 2022 until to date.

[15] It is worth noting that the RH did not appeal against the decision of the court, which was handed down after a full trial. It is also crucial to emphasise that the RH had not filed any application to vary the court order
H dated 31 October 2023 in particular with regard to payment of child maintenance.

[16] As noted earlier, the RH had not paid a single cent of child maintenance since then. The RH himself admitted in his affidavit that he has not paid the monthly maintenance as well as the arrears of maintenance.
I *Prima facie* the RH can be said to have breached the court order without good reason.

Preliminary Objections Raised By RH

[17] At the outset, the RH raised a number of preliminary objections, the first of which is that the PW had failed to serve the order granting leave personally on the RH. The RH contends that the failure to serve the order has violated O. 52 r. 4(3) of the ROC 2012 and is therefore fatal.

[18] Order 52 r. 4(3) of the ROC 2012 reads as follows:

> Application for order after leave to apply granted (O. 52 r. 4)
>
> ...
>
> (3) Subject to paragraph (4), the notice, accompanied by a copy of the statement and affidavit in support of the application for leave under rule 3 and the order granting such leave, **must be served personally on the person sought to be committed.**
>
> (4) Without prejudice to the powers of the Court or Judge under Order 62 rule 5, the Court or Judge may dispense with service of the notice under this rule if it or he thinks it just to do so.
>
> (emphasis added)

[19] The RH contended that contempt proceedings are criminal in nature, which involves the liberty of the alleged contemnor hence strict compliance must be adhered to the safeguards provided for by the law. The case of *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors* [2012] 2 CLJ 849; [2012] 3 MLJ 458 was referred to where Arifin Zakaria CJ held as follows:

> [29] It is settled law that committal proceeding is criminal in nature since it involves the liberty of the alleged contemnor. *Premised upon that, the law has provided procedural safeguards in committal proceeding which requires strict compliance.* In this regard, Cross J in *Re B (JA) (An Infant)* [1965] 1 Ch 1112 had this to say:
>
> > *Committal is a very serious matter. The courts must proceed very carefully before they make an order to commit to prison; and rules have been laid down to secure that the alleged contemnor knows clearly what is being alleged against him and has every opportunity to meet the allegations. For example, it is provided that there must be personal service of the motion on him even though he appears by solicitors, and that the notice of motion must set out the grounds on which he is said to be in contempt; further, he must be served as well as with the motion, with the affidavits which constitute the evidence in support of it.*
> >
> > *It is clear that if safeguards such as these have not been observed in any particular case, then the process is defective* even though in the particular case no harm may have been done. For example, if the notice has not been personally served the fact that the respondent knows all about it, and indeed attends the hearing of the motion, makes no difference. In the same way, as is shown by *Taylor v. Roe*, if the notice of motion does not give the grounds of the alleged contempt or the affidavits are not served at the same time as the

A notice of motion, that is a fatal defect, even though the defendant gets to know everything before the motion comes on, and indeed answers the affidavits. (emphasis added)

[20] The RH urged this court to dismiss the application since the PW had failed to personally serve the relevant cause papers on the RH and failed to B tender any proof of service in her affidavits. Neither did she apply to the court to dispense with personal service.

[21] In connection to the next objection, the RH has contended that the PW has pursued the wrong mode of enforcement for monthly child maintenance which is a monetary judgment. It was also contended that the penal clause C attached to the order clearly stated that any breach of the order would result in execution proceedings. Order 45 r. 1 of the ROC 2012 provides that execution proceedings may be enforced in one or more of the following means *ie*, by way of a writ of seizure and sale, garnishee proceedings and/ or an order of committal. It was contended that since this was a disobedience D of payment obligation under a monetary judgment, it did not come under the purview of the law of contempt. Learned counsel for the RH cited the decision in the case of *Lee Lay Ling v. Goh Kim Nam & Anor* [2013] CLJU 1000; [2013] 1 LNS 1000; [2014] 8 MLJ 805, which was followed in the recent case of *Anita Carolyn Francis v. Veeramohan Dorairaja* [2022] CLJU E 2183; [2022] 1 LNS 2183; [2022] MLJU 2261. In both the aforesaid decisions, the court considered O. 45 r. 1 of the ROC 2012 which stipulated clearly how monetary judgements are to be enforced. The court viewed committal is not a mode of enforcement for a monetary judgment, unless it is a monetary judgment which falls within O. 45 r. 5.

F **[22]** In rebuttal, the PW has submitted that the RH had wilfully failed and/ or neglected to comply with the order of court dated 31 October 2022, even though he was fully aware of the same. The RH was present for the duration of the whole trial and personally received the decision of the learned judge when she handed down judgment of the court on 31 October 2022. The RH's G solicitors had made known to the PW that they were authorised to accept the service of documents.

[23] What is more, the RH had relied on the said order to exercise his right of access to the child. The RH cannot be said to be unaware of his duty to provide maintenance for his own offspring. In any event, the order granting H leave to proceed with committal proceedings was properly served on the RH since he had no difficulty to oppose the instant application.

[24] I had to agree with the PW on these matters. I was satisfied that the RH was aware and was in full cognisance of the committal proceedings that was commenced against him. There can be no question that the RH knew of I the terms of the court order at all material times. As was pointed out earlier, the RH was present for the duration of the whole trial and was present in person when the learned judge handed down her decision, ordering, *inter alia,*

the monthly payment of child maintenance. In addition, the RH's solicitors were authorised to accept service of document. This has manifested in the finding of this court that the RH had no difficulty to oppose the committal application. I find that on the facts of the case presently before this court any failure to serve the order of court is not fatal nor prejudicial to the RH. In my view, the main issue to be addressed here is whether the RH was prejudiced by the same. The answer to that is clearly in the negative as the RH was aware and knew the reasons for the committal proceedings taken against him.

[25] In this regard, in *TO Thomas v. Asia Fishing Industry Pte Ltd* [1977] CLJU 126; [1977] 1 LNS 126, the Federal Court had made clear that in the matter of contempt arising out of disobedience to an order of court, the test was to ask whether the alleged contemnor knew of such order. It is not necessary that he be served. The Federal Court referred to the English case of *United Telephone Co v. Dale* [1884] 25 Ch D 778, where Pearson J held as follows:

> In no case will the court not enforce obedience to its injunction by means of a committal to prison, simply upon the ground that the order has not been served, **when it appears beyond all doubt or dispute that the defendant is aware** that the injunction has been granted, and that it is the intention of the plaintiff to enforce it. (emphasis added)

[26] Key J in *Avery v. Andrew* [1879] 13 ChD 110 expressed the same view but in stronger words:

> What is the necessity for serving an order upon a defendant, if he knows perfectly well without that service what it is which he is bound to obey?

[27] The court's attention was also brought to the case of *Madlis Azid & Ors v. Chua Yung Kim & Ors* [2013] 2 CLJ 110, the learned judge decided that:

> *(1) Order 45 r. 7(7) permits the plaintiffs to cite the first defendant for contempt notwithstanding that the order of the court was not served on him and for dispensation from service to be granted whether prospectively or retrospectively.* The facts showed that the plaintiffs in their statement of claim endorsed in the writ had claimed under prayer (b)(i) the specific order which was item (5) under the judgment. The first defendant therefore knew throughout the legal proceedings including at the delivery of the judgment that this was the main order directed against him. *Further, the first defendant knew that judgment was obtained against him when he instructed his solicitors to apply for stay of execution of the judgment in light of the facts and circumstances, there was no doubt that the first defendant knew the judgment and its terms although it was not personally served on him. It was just for this court to dispense with the service of the order on the first defendan*t (paras 13, 14 & 15).

[28] I also found support for this view in the Federal Court case of *Golden Star & Ors v. Ling Peek Hoe & Ors* [2021] 3 CLJ 443, where Hasnah Mohammed Hashim FCJ discussed the issue of personal service. Her

Ladyship held that 'the question of whether the failure to comply with the rule is fatal or not depends on the facts of the case and whether it has prejudiced the proposed contemnor'.

[29] In any event, the court has the discretion to dispense with service of the cause papers for the committal proceedings altogether if the court thinks it just to do so and I am of the view that it is just to do so in this instant case.

[30] Without meaning to repeat myself, I am of the considered opinion that it is unjust and inequitable of the RH to seek for the committal application to be set aside on technical grounds when the cause papers had been duly served on the RH's solicitors and the RH had, without missing a beat, filed an affidavit to oppose the application. In the case of *Daljinder Singh v. Amardeep Singh Daljinder Singh* [2022] CLJU 2405; [2022] 1 LNS 2405; [2022] MLJU 2515, the court held:

> [50] There is no dispute that the relevant cause papers were duly served on the Respondent's advocates and the Respondent have filed an Affidavit in Opposition to oppose the application for committal (Encl. 107). Thus, the Respondent knew about the committal proceedings herein taken out by the Applicant against him.
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> [51] Hence, the Court is inclined to agree with the Applicant's submission that the respondent has full knowledge of the terms of the Order and the committal proceedings and it is just to dispense with personal service of the Order against the Respondent under 45 r. 7(7) ROC 2012. See (1) *Robert Doran & 2 Ors v. Kuan Pek Seng @ Alan Kuan & 23 Ors* [2011] CLJU 670; [2011] 1 LNS 670 (2) *Madlis bin Azid @ Aziz & 97 Ors v. Chua Yung Kim & 3 Ors* [2012] CLJU 359; [2012] 1 LNS 359; [2012] 5 AMR 344 and (3) *Harta Bitara Development Sdn Bhd v. Khairuddin* [2022] 3 CLJ 106; [2021] AMEJ 2017.

[31] It must be emphasised here that the RH had selectively defended himself in the applications filed by the PW for amendment and variation of the terms of the court order. He had taken steps to utilise the access order and sent correspondences to the PW declaring that he was desirous of meeting the child to fulfil his duty as the child's biological father. The RH had indeed utilised the said access to meet the child on 5 November 2022 and therefore he cannot have a selective memory to fulfil his duty in regard to maintaining his own child's financial needs.

[32] On the facts of this present case, I find it undeniable that the RH was fully aware of the unpaid maintenance sum.

[33] In any event, even if there is non-service of cause papers, it does not automatically render the committal proceedings illegal. This is the view of the learned judge in the case of *Usharani Supramaniam* (*supra*), where she opined:

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[13] *I found the respondent's contention bereft of merit, as first and foremost non-service of the cause papers in this case did not automatically render the committal proceedings illegal …*

…

B

[17] Reference was also made to *TO Thomas v. Asia Fishing Industry Pte Ltd* [1977] 1 MLJ 151 ("*TO Thomas*"), where *the Federal Court had made it very clear that in the matter of contempt arising out of disobedience to an order of injunction, the test was to ask whether the alleged contemnor knew of such order. It need not, therefore be necessary that he should be served.* The Federal Court had referred to the English case of *United Telephone Co v. Dale* (1884) 25 Ch D 778 where Pearson J had stated in the following passage:

C

> In no case will the court not enforce obedience to its injunction by means of a committal to prison, simply upon the ground that the order has not been served, *when it appears beyond all doubt or dispute that the defendant is aware* that the injunction has been granted, and that it is the intention of the plaintiff to enforce it. (emphasis added)

D

[34] I move on now to consider the objection against initiating committal proceedings for monetary judgment. I respectfully take the opposite view from that taken in the case of *Lee Lay Ling* and *Anita Carolyn Francis*. I fully endorse and prefer the decision of the court in the case of *Usharani Supramaniam v. Vijaya Chander Rajendram* [2022] CLJU 2680; [2022] 1 LNS 2680; [2022] MLJU 2972, where the court held as follows:

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> [31] The Respondent proceeded to submit that committal proceedings could not be initiated for monetary judgments. I found this argument unacceptable as it was decided otherwise by the High Court in *Lee Yen Hock v. Avenue Golden Sdn Bhd & Ors* [2017] 1 LNS 2223, and the Court of Appeal in *Hong Kwi Seong v. Ganad Media Sdn Bhd & Another Appeal* [2012] 8 CLJ 667, where in the latter case it was stated by Low Hop Beng in the following passages:

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> … while it is true that a money judgment could be enforced pursuant to the Debtors' Act 1957, the Act does not, either expressly or by necessary implication exclude committal proceedings in the event of a defendant's refusal or neglect to do the act within the time specified in the money judgment. Hence, we respectfully hold that the decision of the Court of Appeal in *Hong Leong Bank supra*, does not assist the appellant in the instant appeal.

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[35] In any event, this matter pertains to an order that was granted after a full trial with witnesses and exhibits tendered. The RH had ample opportunity to defend himself. This was in contrast to a consent order agreed upon by parties. Without a doubt, an order obtained after a full trial entitles it to be enforced by way of a committal proceedings.

I

[36] For the aforesaid reasons, I dismiss the preliminary objections raised by the RH.

A **The Committal Application**

[37] In the statement pursuant to O. 53 r. 3 of the ROC 2012, the PW's basis for filing the application for committal proceedings is simple and straightforward. The RH has not paid a single cent of maintenance for the child since the day she was born. After going through a full trial and after
B hearing witnesses, the learned High Court Judge had ordered the RH to pay the sum of RM1,500 per month as child maintenance with effect from the date of the filing of the divorce petition until the child has obtained her first degree from the university.

C **Whether There Was Wilful Refusal To Comply With The Terms Of The Court Order?**

[38] In *Wee Choo Keong* (*supra*), the Supreme Court held that it is established law that a person against whom an order of court has been issued is bound to obey that order until it is set aside. It is not open for him to decide
D for himself whether the order was wrongly issued and therefore does not require obedience. His duty is one of obedience until such time as the order may be set aside or varied. Any person who fails to obey an order runs the risk of being held in contempt with all its attendant consequences.

[39] The burden of proof for contempt of court is beyond reasonable doubt.
E It is trite law that the applicant has the legal burden to prove beyond all reasonable doubt that the RH had breached the order of court dated 31 October 2022. In this case, the burden is on the PW to prove that the RH had wilfully disobeyed, disregarded or refused to comply with the terms of the court order. The authority to support this proposition is found in the
F judgement of Lee Hun Hoe CJ (Borneo) in *TO Thomas* (*supra*), where His Lordship held:

> Wilfully disobeying an order of the court constituted contempt. This commonly consists in a party's doing otherwise than he is enjoined to do, or not doing what he is commanded or required to do by the process,
G order or decree of the court: *Miller v. Knox*. The contempt must be wilful. **An order of court must have been contumaciously disregarded, it is no good if it is casual accidental and unintentional:** *Fairclough & Sons v. Manchester Ship Canal Co (No 2).* (emphasis added)

[40] It is not necessary to prove intention in contempt proceedings.

H **[41]** If there is a doubt, the doubt has to be resolved in the favour of the RH.

[42] The RH was given the opportunity to be heard by the court when he took the witness stand and gave evidence on his own behalf. The RH has pleaded the following defence through his affidavit in reply as well as in his
I oral testimony:

(i) he is facing difficulty in securing a permanent job and has no stable or fixed income to pay the child maintenance;

(ii) he is registered with AKPK to assist and address his financial woes;

(iii) he is suffering from lumbar spondylosis, an illness which is an age-related degeneration of the vertebrae and disks of his lower back and this health disability has caused his option of physical jobs to be limited.

[43] The RH testified that he is trying his best to meet his financial obligations pursuant to the court order.

[44] Relying on the decision in *Lee Lay Ling* (*supra*), the RH has contended that his impecuniosity and health issues does not constitute a wilful default of his payment obligations under the order. He was simply unable to fulfil his monetary obligation. In the premises, the RH argued that the PW had failed to satisfy her burden of proof beyond reasonable doubt that the RH was in wilful default of his payment obligations under the order.

[45] The RH alleged that the PW was motivated by a sense of revenge against him and reminded the court that "revenge can masquerade as justice but it frequently ends up perverting it."

[46] I am satisfied that on the evidence before me, it is incontrovertible that the RH has failed to comply with paras. 4 and 5 of the court order. He has never disputed that he had never made any payments as maintenance for the child but he has provided a litany of excuses for not doing so.

[47] In my judgment, all the reasons and assertions by the RH are untenable and devoid of merit. This is a case where the PW is seeking what is the right of the child that they share and it is difficult for me to accept that this application is motivated by revenge when the parties had gone through a full trial with evidence taken. The learned judge preceding over the case had heard the evidence of the PW and RH and had come to a reasoned decision as to why the RH was ordered to pay monthly maintenance for the child.

[48] The impecuniosity and health issues referred to by the RH are not new issues. These same excuses were raised at the trial before the learned judge, who had the primary task of evaluation of the evidence. She had the advantage of seeing the witnesses and studying the exhibits tendered and had come to a specific finding of fact based on the interpretation of the available exhibits tendered and upon inferences drawn from facts elicited from testimony aided by documentary evidence. Therefore, for the RH to regurgitate the same reasons for his refusal to pay child maintenance is unacceptable as correctly pointed out by the PW.

[49] It is noted that the RH failed to produce documents and/or subpoena his witnesses during the trial to prove that he had health issues that prevented him from fulfilling his duty to pay child maintenance.

[50] In my considered opinion, the RH's explanations are feeble and incapable of belief. I reject these explanations as unacceptable.

[51] It seemed to me that the RH was uncaring about the best interest and welfare of his only child. In his evidence, the RH admitted that he was processing travel documents in order for him to take a holiday trip to Australia but at the same time he claims he cannot even afford to pay maintenance for his child.

[52] Assuming if this was true and if the RH genuinely could not afford to pay the maintenance sum, he could have done the following to alleviate his problems. Firstly, he could have appealed against the decision of the learned judge on the issue of quantum. Otherwise, he could have applied to court to vary the sums to be paid. But no such application has been made. Neither is there any evidence that he had offered as a gesture of goodwill a smaller sum of money and for time to make the payments.

[53] I have reminded myself countless times when hearing these proceedings that contempt is a serious offence. I had carefully considered and examined the cause papers, exhibits, the written and oral submissions and the testimony of the RH. I am satisfied that the evidence when considered in its totality has proved the RH breached and/or refused to comply with the court order to pay maintenance for his child beyond a reasonable doubt. I found the RH guilty of contempt of court in his conduct in not fulfilling his obligation to pay the monthly child maintenance as well as the arrears of maintenance as provided for in paras. 4 and 5 of the court order.

Sentence

[54] Before I proceeded to sentencing, I had given the RH an opportunity to purge his contempt. I postponed sentencing for a period of two weeks in order for the RH to reconsider his position and to find the means to settle the outstanding sum owing.

[55] Upon calling up the case again at the end of the two-week period, the RH came back with promises to pay but with no serious and genuine proof of that. As such, I found that the RH had failed to use the opportunity given by the court for him to purge his contempt. After hearing his plea in mitigation, I proceeded to pronounce sentence on him.

[56] I gave anxious thought and was mindful that the court is vested with a wide discretion to sentence a contemnor. I kept foremost in mind the public interest element as my primary consideration. I took into consideration that the RH was non chalant and unapologetic in his refusal to obey the court order.

[57] I was of the view that a custodial sentence will be appropriate in the circumstances of the case as the RH's conduct was contumelious and indolent. He had full knowledge of his obligation to pay maintenance for the child but he wilfully neglected that most basic financial obligation that a father owes to his flesh and blood. The child is now ten years old and has

never been financially supported by the RH since the day of her birth. It is indicative of the RH's intention of avoiding making any payments to the child. Without a doubt, it is the primary duty of a father to maintain and contribute to the maintenance of his child. This disobedience in failing to comply with the court order is unacceptable and cannot go unpunished. It called for a custodial sentence.

[58] Having given consideration to the nature of the contempt and balancing that with the plea in mitigation, I sentenced the RH to a term of imprisonment of four months which with good behaviour will see him serving a quarter of that sentence.

[59] As I had stated earlier, it is in the public interest to impose the said sentence so as to send a clear message to not only the RH but to deter any parent out there whose duty it is to maintain their child that court orders are to be obeyed, especially where it involved a child whose best interest and welfare had been abysmally ignored by the RH.

[60] The sentence of imprisonment of four months is to take effect from date of sentence.